

(20)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.807/2004

New Delhi this the 25th August, 2004

HON'BLE JUSTICE SHRI V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER(A)

Assistant Sub Inspector
(Data Entry Operator)
Shri Raghuvender Singh
No.27/D, Computer Centre,
Traffic, Delhi.Applicant.
(By Advocate: Mrs.Avnish Ahlawat)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police,
Police Headquarters,
MSO Building, IP Estate,
New Delhi.
2. Deputy Commissioner of Police,
Police Headquarters (Establishment),
Delhi.

...Respondents..

(By Advocate: Shri Ajesh Luthra)

ORDER (ORAL)

By Justice Shri V.S.Aggerwal, Chairman

The applicant by virtue of the present application seeks to assail the order of 23.3.2004, whereby he has been reverted to his substantive rank i.e. Constable (Executive) in Delhi Police.

2. Some of the other facts can also be delineated to precipitate the question in controversy. The applicant was persuading the respondents pertaining to their right to be absorbed as Data Entry Operator (for short DTO). He along with another had filed OA 2372/2000 which was dismissed by this Tribunal. Against the said order, they preferred Civil Writ Petition No. 5708/2001 which was decided by the Delhi High Court on 16.1.2002. The Delhi High Court's order reads:

Ms Ag

(2)

In the counter-affidavit, the respondent has not stated as to how and in what manner the petitioners do not fulfil the eligibility criteria. The petitioner having been selected, a presumption would arise that they had fulfilled the eligibility criteria. It is not denied or disputed that the petitioners had undergone all tests and they were selected on the basis of interview held by the Selection Board. Having regard to the fact that it is only for the Commissioner of Police to satisfy himself as to whether the petitioners fulfill the eligibility criteria or not, we are of the opinion that keeping in view the order passed by the DCP, the Tribunal must be held to have committed an error in not taking into consideration the said fact.

3. Thereafter the High Court went on to hold that the applicants do not have any legal right to be permanently absorbed. In terms of Rule 17 of the Delhi Police (General Conditions of Service) Rules, 1980, it is for the Commissioner of Police to satisfy that the applicant would be liable for permanent absorption in Delhi Police. With these broad findings, the impugned order at that time had been quashed.

4. After the said order passed by the Delhi High Court, the Commissioner of Police has passed the impugned order which reads:

"In pursuance of judgment dated 16.1.2002, delivered by the Hon'ble High Court of Delhi in C.W.P.5708/2001 titled as Raghuvender Singh Vs. UOI permanent absorption as ASI (D.E.O.). Raghuvender Singh, No.27/D for his permanent absorption as ASI (D.E.O.) in Delhi Police was considered by the Commissioner of Police, Delhi. After hearing him in Orderly Room on 24.9.2002, the C.P.Delhi had observed to seek approval of the competent authority for the permanent absorption of ASI (D.E.O.) Raghvender Singh No.27/D as ASI(DEO) in Delhi Police. Accordingly, the matter was referred to the Govt. of NCT of Delhi for conveying the approval of the competent authority, which has not been received so far.

Now on having been found indulging in corruption activities case of ASI (DEO) Raghuvender Singh, No.27/D has again been examined in this Hqrs. and decided to repatriate him.

Hence, ASI (DEO) Raghuvender Singh, No.27/D is hereby reverted in his substantive rank i.e. Constable (Executive) in Delhi Police with immediate effect with the direction to report to his parent Unit immediately. This has the approval of the C.P. Delhi."

Ms Ag



5. The petition is being contested.

6. The main argument advanced was that reason in the impugned order is totally arbitrary. According to the learned counsel, one complaint of 26.12.2000 had been received. It was an anonymous complaint. It had been filed after being examined.

7. On behalf of the respondents, it was stated that the decision had been taken to initiate the departmental proceedings but the file was not traceable.

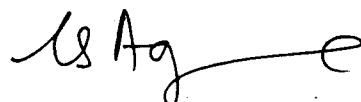
8. Reliance on behalf of the applicant was being placed on the communication of the Deputy Commissioner of Police (Traffic) pertaining to the complaint against the applicant. But perusal of it clearly shows that this was a note submitted by the DCP (Traffic) to Joint Commissioner of Police (Traffic). It is not a final decision and, therefore, no reliance can be placed upon it so as to state that the complaint had already been filed.

9. However, reverting back to the impugned order, it is obvious that the same cannot stand scrutiny. It only recites that the applicant has been found indulging in corrupt activities. There is no material, as for the present, on record to support such a finding. Merely on basis of such a complaint which is yet to be investigated departmentally, such a finding cannot be arrived at. Therefore, in the absence of any other material, the impugned order cannot be sustained.

10. Resultantly, we dispose of the present application with the following directions:

a) impugned order is quashed;

b) respondents, if deemed appropriate, may take departmental action against the applicant, in case they have material in accordance with law; and



20

4

c) if there is anything against the applicant, the applicant would have a legal right to challenge the same.



(S.A.Singh)
Member(A)



(V.S.Agarwal)
Chairman

/kdr/